

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS DELAZZER,

Petitioner,

v.

Case Number 12-12326
Honorable David M. Lawson

MITCH PERRY,

Respondent.

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ORDER DENYING CERTIFICATE OF APPEALABILITY

The petitioner, Thomas J. DeLazzer filed a *pro se* petition for a writ of habeas corpus with this Court pursuant to 28 U.S.C. § 2241 challenging a prison disciplinary violation and state court guilty-plea conviction for prison escape for which he was sentenced to three to five years imprisonment in the Jackson County Circuit Court in 1997. On July 10, 2012, the Court entered an order construing the petition as one brought pursuant to 28 U.S.C. § 2254, denying the petitioner's motion for expedited time, and requiring a response from the respondent. On July 23, 2012, the petitioner filed a notice of appeal of the Court's July 10, 2012 order.

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, which was amended as of December 1, 2009:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11(a), Rules Governing Section 2254 Cases in the United States District Courts.

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

Although the Court has not entered a final order adverse to the petitioner, it will deny the petitioner a certificate of appealability on the issue of whether his habeas petition should proceed under 28 U.S.C. § 2254 because it believes that no reasonable jurist would disagree with its decision.

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 10, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 10, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL